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No. 106.

Reply Brf. of Guthrie & Meagher for P. E.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

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CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK,
Plaintiffs in error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

No. 106.

Error to the Supreme Court of Illinois.

REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
For plaintiffs in error.

WASHINGTON, December 3, 1902.

[18,178]

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REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Three points in the brief filed on behalf of the defendant in error will be discussed in the following order, viz.: (1) as to the question involved and the point decided in the case of *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; (2) as to the enforcement of the law, notwithstanding the unconstitutionality of the exemption of certain life estates, and (3) as to the true meaning and necessary effect of the statute.

I.

Although it is true that in the *Magoun* case, *supra* (170 U. S. 283), it was argued that the exemptions in the inheritance tax law of Illinois, including the exemption of life estates, rendered the act unequal and violated the provisions of the Fourteenth Amendment, the class of tenants for life or for years was not before the court and the

question of an estate for life or for years under section 2 of the act was not involved. The only point presented was as to the effect of the exemption of property under section 1 to the amount of $20,000 as applicable to the class of lineal descendants to which Mrs. Magoun belonged. By way of argument, reference was made to other exemptions, including that of certain life estates under section 2 of the act; but it was not suggested that Mrs. Magoun held a life estate or could complain of the exemption of life estates in whole or in part. The only exemptions mentioned in the opinion of Mr. Justice McKenna are those contained in section 1 (170 U. S. 298–299).

It is submitted that the *Magoun* case did not decide that tenants for life or for years could be discriminated against in the manner provided in section 2 of the act, now before the court. The point could not have been considered, for the plain reason that Mrs. Magoun was not a tenant for life or for years, and could not have been heard to complain of discrimination in a class to which she did not belong. The whole class of life tenants or tenants for years could have been exempted, and such a classification would be within the discretion of the legislature. The constitutionality of the exemption under section 2 is now directly challenged by the plaintiffs in error because they belong to the class affected, and they contend that in their class they are discriminated against in that the tax is not similarly imposed upon

others within the same class receiving substantially the same kind of property or exercising the same privilege.

II.

The Supreme Court of Illinois, in overruling the contention of the plaintiffs in error as to the unconstitutionality of the exemption in question, among other things said (record, p. 206):

> "Even if it were one which the legislature had no power to make, that provision only would be void, leaving the rest of the act in full force; and such a construction would not affect the order of the court appealed from nor aid appellants in their contention."

And the brief in this court submitted by the defendant in error urges this view as a reason why the judgment appealed from should not be disturbed (Brief for defendant in error, pp. 36–37).

It must, of course, be clear that no such suggestion can deprive this court of its jurisdiction. If the provision exempting part of the class of life tenants be unconstitutional, the law cannot be executed so as to tax those life tenants whom the legislature has expressly declared should be exempted from taxation. To do so would give the statute an operation beyond the clear intent of the legislature, "and beyond what any one can say it would have enacted in view of the illegality of the exceptions."

In the case of *Spraigue* v. *Thompson*, 118 U. S. 90, 94, the state court had declared an exemption to be invalid and had then decided that the

statute could be enforced and its provisions made to apply to the exempted class. This court, however, held that such a view could not be accepted, and that if the exemption were invalid, the whole statute had to fall. See, also, *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U. S. 601, 636; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Estate of Mahoney*, 133 Cal. 180, 181.

In the case at bar, the court below has not invalidated the alleged unconstitutional exemption, but the statute is now being enforced under its decision against the plaintiffs in its entirety and upon the assumption that the objectionable clause is in full force and effect so as to exempt part of the class of tenants for life or for years. Hence, the question now presented is whether, as so interpreted and enforced, the statute violates the requirement of the equal protection of the laws. It would, indeed, be an extraordinary doctrine that a taxpayer could not complain of an unequal tax law because, if the inequality were removed, he would nevertheless be subject to taxation. Such a doctrine would preclude any relief whatever from an unequal tax law, and it would permit the taxing of A and the exemption of B under exactly similar conditions.

III.

Upon the merits of the case, most of the forcible argument on behalf of the defendant in error cannot be disputed. For example, if the classification is based upon a substantial difference which

"clearly distinguishes one class from the other" and if the law operates "alike upon all in each class," there is no occasion for further discussion. No one will challenge the power of the state to create classes or to tax lineals and exempt collaterals, or *vice versa*, or to wholly exempt estates for life or for years. The only question presented is whether or not the Illinois statute bears unequally upon certain members of the same class of tenants for life or for years.

In several parts of the defendant's brief, it is stated that there are two classes of tenants for life or for years consisting, in the one case, of what "may be designated as life estates with remainder to the lineal descendants of the *beneficiary*," and in the other case of what "may be designated as life estates with remainder to the collateral heirs of the decedent or to the stranger in blood" (pp. 6, 11, 33). Such, however, are not the provisions of the Illinois statute. On the contrary, the class in one case is not of estates with remainder to the lineal descendants of the *beneficiary*, but of estates with remainder to the lineal descendants of the *decedent*, who may be entire strangers to the beneficiary.

If the Illinois statute had divided tenants for life or for years into two classes, such as is suggested by the learned Attorney-General, and had taxed those life estates where the remainder went to the lineal descendants of the life tenant and had exempted those life estates where the remainder went to strangers in blood to the life tenant,

an entirely different question might be presented. But the clear language of the statute forbids any such interpretation. Under its provisions, the estate may be to A, a collateral, with remainder back to a lineal descendant of the decedent, and A is taxed, although such remainder may be to an entire stranger, whilst if the remainder be to his own child, he would be exempted from taxation, because the remainder was "to the collateral heir of the decedent or to the stranger in blood." The tax is, therefore, made to depend upon nothing in which the life tenant necessarily has the slightest personal concern or interest or from which it could reasonably be said that his life estate was made more beneficial or desirable. For the sake of the argument, it might well be conceded that a division of life tenants into two classes, taxing those where the remainder went to their own children and exempting those where the remainder went to strangers, would be upheld as a reasonable and rational division into classes. But it is purely fanciful and arbitrary to divide life estates, as in the statute now before the court, where there is not the slightest necessary connection between the life tenant and the remainderman.

A reference to the true nature of this form of taxation may not be superfluous. Whatever we call it, the power must be exercised in subordination to the guaranty of equal laws. Notwithstanding the plain language of the Illinois statute, it may be conceded that the present tax is not one in its essence on property, but on the succession.

Stated in different language, the tax is on the act of transmitting or receiving property in a certain manner or from certain sources or by certain classes. The validity of such a tax does not rest at all upon the authority to regulate inheritances or to confer or limit the privilege or right to inherit or succeed to a decedent's property; for if it did, the federal statute could not be maintained. The only true and sound view is that the devolution of property upon death involves a transaction which is a fit and proper subject of taxation wholly irrespective of the power to regulate such devolution. *Knowlton* v. *Moore*, 178 U. S. 41,57.

Even if the power to levy an inheritance tax depended upon the right to regulate inheritance to the fullest extent that may be argued on behalf of the defendant in error, nevertheless the constitutional guaranty of equal laws would be applicable. As Mr. Justice McKenna said in construing this statute in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 292 :

> "The power of the states over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

Whilst the Fourteenth Amendment concededly does not prohibit, in tax laws, reasonable classification based upon substantial differences, it is firmly established that the taxing power must be exercised impartially and by equal laws, and that taxes

must be imposed without discrimination upon all persons fairly within the same class and exercising like rights or privileges. In other words, as Mr. Justice Matthews said in the *Kentucky Railroad Tax Cases*, 115 U. S. 321, 337:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

Or, as Mr. Justice Field said in *Hayes* v. *Missouri*, 120 U. S. 68, 71:

> "The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

In *Giozza* v. *Tiernan*, 148 U. S. 657, 662, Mr. Chief Justice Fuller said:

> "It is enough that there is no discrimination in favor of one as against another of the same class."

In the two recent cases of *Cotting* v. *Kansas City Stock Yards Co., &c.*, 183 U. S. 79, 111, and *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 560, this court has reviewed the cases on classification and again applied the rule above stated requiring equality among those of the same class. In the former, Mr. Justice Brewer, speaking upon this point for the unanimous court, said:

> "So again exercising the undoubted right of classification it may often happen that some classes are subject to regulations, and some individuals are burdened with obligations which do not rest upon other classes or other individuals not similarly situated. . . . But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

It is undoubtedly customary in inheritance or succession tax laws to classify heirs, legatees and distributees so as to create classes among relatives according to their degree of kinship to the decedent, and between relatives and strangers. Such classes are obviously definable with regard to relative differences and reasonable distinctions, and they are, therefore, not arbitrary. When, however, a class has been thus created, each member of that class is entitled to "be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Under the Illinois statute, a class of tenants for life or for years, comprising both collateral relatives and lineal descendants, are subdivided so that some are taxed and others are not taxed. In both cases, the estate—whether for life or for years—is exactly the

same in so far as concerns "the legatee or person entitled to such property" and who pays the tax. The life estate may be to a collateral with remainder to a lineal descendant not related to such life tenant, yet the latter is taxed, although not taxed if the remainder happens to be to a collateral of the decedent, even if it be the life tenant's own child.

It may thus come to pass that of two persons occupying the same relation to the decedent and taking in the same character two pieces of property of equal value for the same term, one would pay a tax and the other be exempted simply because the remainder went to a collateral or lineal of the decedent, in whom the life tenant had no interest. It is submitted that such a law necessarily produces unreasonable inequality within the class of persons holding or enjoying property for life or for years.

By declaring invalid the present tax upon estates for life or for years because of the inequality resulting from the exemption under section 2 of the act, the taxing power of the state will not be embarrassed in the slightest degree. The act can be remodeled either by omitting the exemption altogether or by adopting the theory now urged by the learned counsel for the defendant in error, namely, a tax upon an estate for life or for years where the remainder is to the lineal descendant of the beneficiary and exemption where the remainder is to strangers of the beneficiary. Such a classification might, perhaps, be sustained; but it

is obvious that it would differ radically from that contained in the present statute, which, in the feature now challenged, is unique of its kind, and finds no analogy or support in the legislation of any other state or country.

Washington, December 3, 1902.

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